

# CIVIL AERONAUTICS JOURNAL



JUN 24 1940

6A114112

ISSUED TWICE MONTHLY BY THE CIVIL AERONAUTICS AUTHORITY

VOL. 1

WASHINGTON, JUNE 15, 1940

NO. 12

## PLANS ANNOUNCED FOR 45,000 NEW PILOTS

*Chairman Hinckley outlines details of expanded Civilian Pilot Training Program—Refresher courses made available to thousands of active and inactive pilots—First group of 15,000 new students starts training June 15*

Immediate steps to provide for the primary training of 45,000 new pilots by July 1, 1941, were announced on June 3 by Chairman Robert H. Hinckley of the Civil Aeronautics Authority. Following the pattern established during the past year in the Civilian Pilot Training Program, which will have turned out 9,810 new pilots by June 30, the enlarged program will undertake, as a first step, to train 15,000 additional pilots by September 1, 1940. The instruction of this group is to be under way by June 15, 1940.

"The Civil Aeronautics Authority can undertake this task at such short notice," said Chairman Hinckley, "because we are already mobilized to do so. During the past year the Civilian Pilot Training Program operated with thorough effectiveness in 550 centers distributed through every State in the Nation, Alaska, Hawaii, and Puerto Rico. At these centers more than 500 small commercial aviation operators are already organized to furnish a thoroughly proven course of flying instruction. Facilities for complete ground-school instruction are immediately available at 435 colleges and universities and in 75 communities where last year's training was conducted on a noncollege basis. All of these groups have been thoroughly trained in the required Government procedure, in instruction standards, and in measures for insuring safety in this type of aviation. We know this organization is efficient. This year's graduates have been pronounced, by independent inspectors, to be far above the average of civilians of equal flight experience trained by usual methods of instruction. During almost an entire year of intense

flying activities once regarded as inherently hazardous, only one student has been lost in an aircraft accident. This mobilized organization is fully prepared for immediate action."

By June 30, 1940, 9,000 students in 435 colleges will have completed a ground-school course of 72 class hours and a primary flight training of from 35 to 50 hours. In addition, 750 students in 75 noncollege units will have completed similar courses. A further 60 students are receiving primary flight training in so-called spin-proof airplanes in an experimental program to test the effectiveness of such planes in elementary instruction. Meanwhile 75 students who received their elementary training during the spring of 1939, when the basic course was tried out at 13 colleges, have been undergoing a special 45-hour course of secondary training.

### 1,200 Instructors Rated in Past Year

"In launching our program during this past year," Chairman Hinckley stated, "one of our largest tasks was to make sure that the flying instructors in the course were thoroughly capable of teaching students along the lines set out in the so-called controlled course of the Civilian Pilot Training Program. During the year, 1,200 of these instructors have been put through re-rating examinations. An additional 825 instructors have been given a special 10-hour course of refresher training. Two hundred instructors have been given refresher training in the advanced or secondary course which we plan to establish this summer for those students

*(Continued on following page)*

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# CIVIL AERONAUTICS JOURNAL



ISSUED TWICE MONTHLY BY THE CIVIL AERONAUTICS AUTHORITY

Vol. 1 June 15, 1940 No. 12

Published with the approval of the Director of the Bureau of the Budget by the

CIVIL AERONAUTICS AUTHORITY:

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Issued on the 1st and 15th of each month. Subscription \$1 (foreign \$1.50) per year. Single copies 5 cents. Sold by the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C.

## Pilot Program

(Continued from preceding page)

who have already graduated from the primary training.

Between June 15 and September 1, 1940, the Civilian Pilot Training Program will give primary training to 15,000 pilots. This instruction will be identical with that given during the past school year and will consist of the same ground course of 72 hours and flight course of 35 to 50 hours. A large nucleus of enrollees is already available in the form of students who have passed the ground instruction in the college and noncollege units but for whom no flight scholarships were available. While college training is desirable, it will not be required and it is estimated that a substantial portion of this summer's trainees will be made up of young Americans not now enrolled in regular college courses.

In addition, the Authority plans, this summer, to extend secondary instruction of 45 additional flying hours to 1,000 students who have already taken their elementary training. Five hundred of this year's instructors will be given refresher courses of 25 hours to fit them for secondary instructors.

During the fall semester of the coming school year, 15,000 additional primary pilots will be trained. Three thousand of those who have passed the primary training will be given secondary instruction. An additional 1,000 primary instructors will be given refresher courses of 15 hours. During the spring semester the program calls for training 15,000 more primary pilots and 5,000 secondary pilots. The combined primary and secondary courses, which will give trainees a minimum of 80 hours, are considered equivalent to the Army and Navy primary flight instruction stages of 65 and 72 hours respectively.

## Refresher Courses for Active and Inactive Pilots

Over and above this program aimed at the creation of a reservoir of new pilots, Chairman Hinckley announced that the Authority plans to "salvage" the experience of thousands of civilian pilots who had begun flying careers at their own expense but who for one reason or another have allowed their pilots' certificates to lapse. Some 5,000 active and inactive pilots with commercial ratings are to be given 25-hour refresher courses. Some 7,000 inactive private pilots are to be given 15-hour refresher courses. Twenty-five-hour refresher courses are to be made available to approximately 5,000 solo pilots. A special 15-hour course will be given to 25,000 students who will have qualified as private pilots under the Civilian Pilot Training Program but who are not immediately selected for the secondary training.

Applications have already been received from several hundred additional colleges and aviation operating companies, and from thousands of individual candidates for training who have been unable so far to take part in the program due to limitation of available funds. Colleges and operating companies wishing to share in the enlarged program should apply directly to the senior private flying specialist in charge of the program for their particular district. The districts with the respective specialists in charge are as follows:

**First District**, including New England, New York, Pennsylvania, West Virginia, Virginia, Delaware, Maryland, and the District of Columbia—*Earl Southee, Roosevelt Field, Long Island, N. Y.*

**Second District**, including North Carolina, South Carolina, Georgia, Florida, Tennessee, Mississippi, and Alabama—*E. C. Nilson, P. O. Box 4327, Atlanta, Ga.*

**Third District**, including Ohio, Indiana, Illinois, Kentucky, Michigan, Wisconsin, Minnesota, and North Dakota—*Charles E. Coz, Jr., 1204 New Post Office Building, Chicago, Ill.*

**Fourth District**, including Arkansas, Louisiana, Oklahoma, Texas, and New Mexico—*Ralph R. DeVore, P. O. Box 1689, Fort Worth, Tex.*

**Fifth District**, including Iowa, Missouri, South Dakota, Nebraska, Kansas, Wyoming, and Colorado—*John P. Morris, City Hall Building, Kansas City, Mo.*

**Sixth District**, including Utah, Nevada, Arizona, and California—*Carl F. Lienesch, P. O. Box 1010, Santa Monica, Calif.*

**Seventh District**, including Montana, Idaho, Oregon, and Washington—*Wiley R. Wright, King County Airport, Seattle, Wash.*

Individuals wishing to apply for the flight training should contact the nearest operating company or college enrolled in the program.

## Air Safety Board Reports Show Violations of Civil Air Regulations Major Cause of Fatal Accidents

Violations of Civil Air Regulations were indicated as the probable cause of 22 out of 36 fatal aircraft accidents analyzed by the Air Safety Board and transmitted to the Civil Aeronautics Authority during March and April.

The accidents analyzed were broken down into two groups, one for each month covered. A total of 146 aircraft accidents including 4 airline accidents of a minor nature were reported in March. Of the 16 fatal aircraft accidents in this group, 10 involved violations of the Civil Air Regulations.

After studying the March report the Regulation and Enforcement Division of the Authority concluded: "According to the evidence presented in the Air Safety Board's reports, violations of Civil Air Regulations appear to be factors in 23 of the accidents. Ten of these accidents involved fatalities, two serious injuries, two minor injuries, and there were nine in which no injuries were reported."

Six of the sixteen fatal accidents resulted from spins or stalls. These accidents were attributed to loss of flying speed in a flat gliding approach to a landing; a flat turn made during an emergency landing; stall after completing a 180° turn; and there were three accidents in which recklessness or aerobatic maneuvers at low altitude were given as contributing factors.

Low aerobatics were involved in one other fatal accident which occurred during an exhibition staged over the pilot's home. The pilot completed a series of low aerobatics with a diving spiral which carried him into the ground.

Two fatal accidents were caused by persons walking into revolving propellers. One case involved a prospective passenger and the other a 12-year-old youngster who ran into the revolving propeller of a parked airplane.

A fatal collision accident was attributed to the failure of each pilot to see and avoid the other during the landing approach. The Board also held that the local airport rule permitting planes to make either right or left turns during the approach was a contributing factor.

Heavy plane loading was said to have caused two fatal accidents. In one instance the pilot attempted to take off from a small field under adverse weather conditions in a heavily loaded plane. The plane failed to clear a ground obstruction which caused it to fall into the sea. In the second case, the pilot attempted to take off in an overloaded plane from smooth water, and after a long run collided with a seaplane landing area boundary marker.

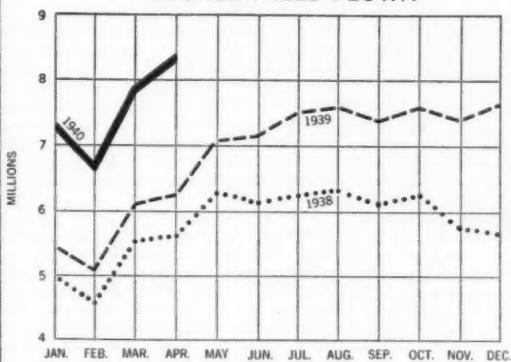
Improper maintenance was found in one case to be the cause of a wing failure during aerobatics. In another, failure of fabric on the fuselage of a plane was blamed for its subsequent loss of control. Both resulted in fatal accidents.

One of the two remaining fatal accidents (See ACCIDENT REPORTS, page 244)

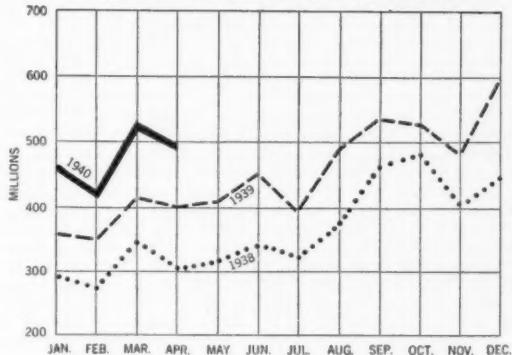
## AIR TRANSPORTATION

## Domestic Air Carrier Statistics for 1938, 1939, and First 4 Months of 1940

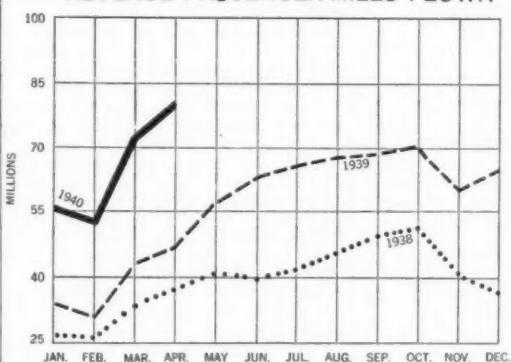
## REVENUE MILES FLOWN



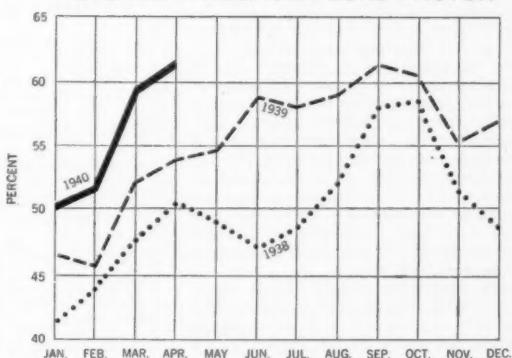
## EXPRESS POUND-MILES FLOWN



## REVENUE PASSENGER-MILES FLOWN



## REVENUE PASSENGER LOAD FACTOR



## Domestic Air Carrier Operations Statistics for April 1940

	Revenue miles flown		Revenue passengers carried		Revenue passenger-miles flown		Express pound-miles flown		Revenue passenger load factor (percent)	
	April 1940	Percent change over 1939	April 1940	Percent change over 1939	April 1940	Percent change over 1939	April 1940	Percent change over 1939	April 1940	April 1939
American Airlines, Inc.	2,018,828	47.80	64,876	81.68	23,887,162	70.26	122,728,202	15.29	68.35	61.72
Boston-Maine Airways, Inc.	49,946	1.62	1,367	26.46	210,023	31.30	273,339	47.99	42.05	32.55
Braniif Airways, Inc.	392,556	45.66	9,612	108.59	3,195,704	120.33	12,705,441	21.89	57.33	58.22
Chicago & Southern Air Lines, Inc.	161,067	2.23	2,552	34.53	1,033,480	37.78	5,093,901	19.47	77.89	47.61
Continental Air Lines, Inc.	96,122	78.53	1,066	223.13	323,384	224.63	397,668	112.77	51.28	30.84
Delta Air Corporation	154,892	30.15	4,209	104.02	1,071,903	81.73	1,798,660	51.63	61.44	49.56
Eastern Air Lines, Inc.	1,197,944	35.73	31,236	61.83	13,557,776	61.39	68,044,872	39.99	63.65	53.30
Inland Air Lines, Inc.	80,172	-1.55	743	29.22	197,243	29.35	237,278	-46.42	24.60	18.72
Marquette Airlines, Inc.	14,548	-17.17	117	-8.60	27,687	3.06	0	-	31.72	19.12
Mid-Continent Airlines, Inc.	122,251	36.78	1,872	60.55	481,855	67.97	1,476,279	-20.63	39.42	35.48
National Airlines, Inc.	82,980	43.42	1,679	113.34	398,932	135.67	647,472	266.36	48.08	31.46
Northwest Airlines, Inc.	441,923	9.93	9,309	79.36	3,522,021	77.03	20,193,239	40.46	40.44	46.51
Pennsylvania-Central Airlines Corp.	314,905	17.94	16,165	69.98	2,869,193	75.75	9,503,549	44.31	59.32	60.75
Transcontinental & Western Air, Inc.	1,276,484	39.85	23,951	79.26	11,676,709	69.60	75,788,290	32.05	55.53	45.96
United Air Lines Transport Corp.	1,731,615	29.39	32,572	65.52	16,106,798	60.15	150,774,525	17.26	66.98	62.23
Western Air Express Corporation	186,886	-4.69	3,557	78.30	1,169,714	60.16	12,158,604	-2.04	50.71	30.21
Wilmington-Catalina Air Lines, Ltd.	8,640	11.63	1,524	15.81	45,720	15.81	287,730	-11.25	51.73	49.59
Total	8,331,759	32.93	206,407	73.91	79,775,304	68.12	491,114,049	22.62	61.37	54.25

# PRIVATE FLYING

## Maintenance of Position Lights Urged for Safety

The ability of aircraft position lights to serve as adequate warning of the location of other aircraft at night depends on the brilliance of such lights. When submitted to the National Bureau of Standards for type certificate tests, the lights are naturally put in the best of condition by the manufacturer so that maximum intensity is available.

Lights meeting the minimum requirements are approved and their effectiveness to warn aircraft at night is based on the assumption that owners will keep their position lights clean. Lights which are neglected and not properly maintained will show a very great decrease in candlepower output; the variation after but a few months' service being usually between 25-50 percent of the original intensity. Under these circumstances the lights are obviously incapable of meeting the minimum performance requirements specified by the Civil Air Regulations.

Examination of position light installations proves beyond all doubt that little or no maintenance attention is given to these units other than to replace burned-out lamps. In order to bring this condition to the attention of aircraft owners, letters have been written to the Airplane Owners & Pilots Association and to the Private Fliers Association (copy to Aeronautical Chamber of Commerce) requesting that these associations write to their members urging them to pay more attention to the proper maintenance of their aircraft lights.

Field personnel of the Civil Aeronautics Authority may be approached henceforth by owners for guidance as to what steps should be taken to put their lights in good condition. The certificate and inspection division has issued instructions embodying the following recommended procedures:

*Cleaning of Cover Glasses.*—It is recommended that owners disassemble their light units and thoroughly wash the cover glasses with soap and warm water. Rinsing and drying should be complete because if a soap solution is allowed to dry, it forms a slight coating, thus reducing the efficiency of the light.

*Replacement of Lamps.*—The lamps should be examined and replaced with new lamps if they have become darkened due to age. Darkening is an indication of impending burn-outs. In the replacement of lamps, if the socket is loose and the lamp may be rotated, the unit should be returned to the light manufacturer for positioning of the socket.

*Cleaning of Reflectors.*—The reflectors should also be washed, using soap and water in the case of Alzac reflectors, and cleaned with some nonabrasive silver polish in the case of silvered reflectors.

Owners can identify which type of reflector is used in their particular lights as the latter type of reflector (silvered) turns a blue-black color due to a chemical reaction, usually as a result of compounds in the air containing sulphur. This coat of tarnish can only be removed by polishing materials and not by the use of soap and water. This latter treatment will suffice for the Alzac reflector however, as the reflector's efficiency is reduced by an accumulation of dirt and not by a chemical reaction resulting in the formation of the tarnish.

Inspectors have been instructed to pay particular attention to the condition of position lights and their reflectors in the course of their routine contacts and do all they can to educate the airplane owners and operators regarding this problem by emphasizing the additional degree of safety attained by frequent position light inspection and proper maintenance.

## Summary of Certificates<sup>1</sup>

Pilot certificates of competency active	34,531
Airline transport pilot certificates of competency active	1,207
Student pilot certificates active	35,292
Clider pilot certificates of competency active	157
Student glider pilot certificates active	352
Mechanic certificates of competency active	10,176
Parachute rigger certificates of competency active	416
Certified aircraft active	12,956
Uncertified aircraft active	491
Certified gliders active	39
Uncertified gliders active	89
Repair stations holding certificates of competency active	190
Ground instructors certificates of competency active	703
Air-traffic control-tower operators certificates of competency active	225
Air carrier dispatchers certificates of competency active	321

<sup>1</sup> As of June 1, 1940.

## Designation of Medical Examiners

During the month of April the following physicians were officially authorized to act as medical examiners for the Civil Aeronautics Authority in the cities named:

*California.*—Dr. John P. Fabian, 116 West Second Street, Chico.

*Minnesota.*—Dr. David E. Nelson, 520½ Broadway, Alexandria.

The following-named physicians changed their addresses during the month, their new addresses being as follows:

Dr. Harold J. Cooper, 1005 Mattel Bldg., 1157 Fulton Street, Fresno, Calif.

Dr. Luis Rossignoli, Avd. Quintana 591, Buenos Aires, Argentina, South America.

The following-named physician is no longer conducting physical examinations for the Civil Aeronautics Authority.

Dr. John Hill Tucker, Charlotte, N. C.

## Accident Reports

(Continued from page 242)

Accidents was caused as the result of a student glider pilot failing to disengage the towline prior to turning away from the course of tow. The other accident occurred as the result of a pilot undertaking a cross-country flight with insufficient fuel. Before fuel exhaustion the pilot attempted a precautionary landing in a small pasture. He overshot the field and while trying to regain altitude for another approach struck a tree.

A total of 153 aircraft were involved in the 146 accidents, 7 of the accidents being the result of air or ground collisions in each of which 2 aircraft were damaged. There were 301 persons involved, 27 of whom received fatal injuries, 15 serious injuries, and 28 minor injuries, while 231 escaped unharmed. Damage to aircraft resulted in 25 planes being destroyed, 157 severely damaged, and 15 slightly damaged, while 2 were involved in accidents without becoming damaged.

During April a total of 474 aircraft accidents, including 3 airline accidents of a minor nature, were reported to the Authority by the Air Safety Board.

In this group 12 out of the 20 fatal aircraft accidents analyzed involved violations of Civil Air Regulations.

The Regulation and Enforcement Division, after studying this group, stated that violations of Civil Air Regulations appeared to be factors in 30 of the accidents; 12 of which involved fatalities, 4 serious injuries, 1 minor injuries, and 13 no injuries.

Eleven of the twenty fatal accidents resulted from spins or stalls. One of these involved low aerobatic flying. Faulty engine maintenance was given as a contributing factor in two.

Low aerobatics also was given as the cause of one other fatal accident, and faulty maintenance or structural failure was involved in three additional fatal accidents. These three accidents attributed to poor maintenance or structural failure were caused by failure to secure the throttle actuating arm with safety wire; corrosion of elevator cables by natural fat acids emanating from a piece of rawhide placed around a lorgeron to prevent chafing of the cable; and failure of the left wing of an old airplane during aerobatic maneuvers in which neither pilot nor passengers wore parachutes.

Two of the remaining four fatal accidents resulted from pilots continuing flight into adverse weather conditions; in another the pilot failed to recover from an aerobatic maneuver started at about 2,000 feet; and in the other, two planes collided in midair.

Two of the reports transmitted to the Authority had recommendations

(See ACCIDENT REPORTS, page 245)

# AIRWAYS AND AIRPORTS

## Notice Required of Construction or Alteration of Structures on or Near Civil Airways

To further insure the safe navigation of aircraft over the Federal Airways System, the Civil Aeronautics Authority on May 17 adopted regulation serial No. 76 requiring that notice be given of the construction or alteration of structures on or near civil airways, to become effective July 16, 1940.

The provisions of the regulation are as follows:

**SECTION 1.** Any person who engages in the construction or alteration of any structure located within 3 miles of the nearest boundary of any landing area along or within 10 miles of a civil airway, which structure or any part thereof is already, or may become by reason of such construction or alteration, of a height, above the level of the landing area, greater than one-fiftieth of the distance of the structure from the nearest boundary of the landing area, shall, prior to the beginning of such construction or alteration, give written notice thereof to the Civil Aeronautics Authority and to the manager or person in charge of such landing area: *Provided*, That this regulation shall not apply to any structure which is less than 5 feet in height above the level of the landing area.

**SEC. 2.** The notice shall be given at least 15 days prior to the date on which construction or alteration is to begin. The notice shall contain: (a) The approximate date upon which, by reason of the construction or alteration, the height of any part of the structure above the level of the landing area will exceed one-fiftieth of its distance from the nearest boundary of the landing area; (b) a detailed description of the location of the structure or the site thereof with reference to the landing area, including the direction and distance therefrom; and (c) a general description of the structure when completed, including a statement of maximum height above the level of the landing area: *Provided*, That in the case of an emergency requiring the immediate construction or alteration of any such structure such information may be given to the nearest inspector of the Authority and to the airport manager by telephone, telegraph, or in person, and the written notice submitted thereafter.

**SEC. 3.** As used in these regulations the term 'landing area' shall mean any landing area, as defined in section 1 (22) of the Civil Aeronautics Act of 1938, which is equipped for the operation of aircraft at night or which has a landing surface at least 2,000 feet long and at least one permanent building devoted to aeronautical purposes.

## Landing Facilities on June 1, 1940

### Airports and Landing Fields

Municipal airports	644
Commercial airports	484
Civil Aeronautics Authority intermediate fields	281
Army airfields	58
Navy, Marine Corps, and Coast Guard stations	20
State-operated fields	43
Marked auxiliary fields	653
Private fields	113
Fields for miscellaneous Government activities	27
Total	2,323

### Airports and landing fields having any night lighting equipment

Municipal	299
Commercial	92
Intermediate	281
Army	34
Navy	13
State	8
Auxiliary	21
Private	8
Total	756

## Seaplane Bases on June 1, 1940

Army, Navy, Coast Guard, Marine Corps	29
Other seaplane bases and anchorages	281
Total	310

### Seaplane bases having any night lighting equipment

Navy and Coast Guard	3
Other bases and anchorages	6
Total	9

## Airport Projects Approved

In accordance with the provisions of section 303 of the Civil Aeronautics Act, the Administrator of the Authority has issued certificates of air navigation facility necessary authorizing the expenditure of Federal funds in the operation of the following projects:

**Albuquerque, N. Mex.**—\$92,538 for W. P. A. project for asphalt seal coating, grading, draining, surfacing, installation of heating and plumbing facilities in the hangar, painting and decorating administration building, landscaping, constructing concrete curb and gutters in parking area, resetting contact lights and installation of flood lights, construction of car storage garage and affiliated and incidental work at municipal airport.

**Auburn, Ala.**—\$68,320 for W. P. A. project for relocation of two landing strips, partial grading of two additional strips, seeding, sodding, and fencing at Auburn Airport.

**Dansville, N. Y.**—\$12,886 for W. P. A. project for extension of the landing area approximately 800 feet, the work to consist of removal of trees, grading, graveling of runways, and fencing; development of auto parking areas; and installation of ground markers at Dansville Airport.

**Eugene, Oreg.**—\$1,116 for W. P. A. project for reconstruction of existing hangar lean-to at municipal airport.

**Farmville, Va.**—\$10,760 for N. Y. A. project for grading for hangar site; erection of a hangar; and relocation of private road to remove hazardous condition on the N.-S. strip, the work to include grading and culvert installation at municipal airport.

**Missoula, Mont.**—\$48,540 for W. P. A. project for grading, surfacing, manufacture and installation of drainage, fencing, and appurtenant work at Missoula County Airport.

**Portland, Maine.**—\$5,100 for W. P. A. project for construction of administration building (this is a supplementary project providing the additional funds necessary to permit construction of the administration building in accordance with revised plans) at municipal airport.

**Tucson, Ariz.**—\$7,686 for W. P. A. project for construction of a one-story addition to the administration building, and reconstruction of the existing building, together with affiliated items of plumbing, heating, and lighting at municipal airport.

**West Lafayette, Ind.**—\$46,885 for W. P. A. project for construction of an addition to the existing hangar, and grading of an area immediately west of the structure to landscape it for the present and to prepare for future expansion at Purdue University Airport.

## Accident Reports

(Continued from page 244)

attached. One of these dealt with the accident in which structural failure of the wing of an old plane brought death to the three occupants. The Board's report cited nine examples of structural failure in flight which occurred during the calendar year 1939 to fabric-covered airplanes which had been in service 7 years or more. Furthermore, the Board pointed out that seven of the accidents involved fatalities. As a consequence of these findings, the Board recommended that:

"The Civil Aeronautics Authority take the necessary steps to insure a more than ordinary detailed and rigorous inspection of all fabric-covered aircraft which were manufactured more than 7 calendar years preceding the date of inspection, and that diligent effort be made in all such cases to assure the unquestioned airworthiness of the aircraft involved before they are re-certified."

The other report accompanied by a recommendation was the one covering the case in which the elevator cable was corroded due to free fatty acids emanating from rawhide chafing strips. This finding was assisted by an examination conducted by the Bureau of Standards and resulted in the following recommendation:

"That the Civil Aeronautics Authority take necessary action to eliminate the use of rawhide chafing strips in connection with aircraft control cables."

A total of 501 aircraft were involved in the 474 accidents, 27 of the accidents being the result of air or ground collisions in each of which 2 aircraft were damaged. There were 794 persons involved, 29 of whom received fatal injuries, 21 serious injuries, and 28 minor injuries, while 716 escaped unharmed. Damage to aircraft resulted in 42 planes being destroyed, 411 severely damaged, and 42 slightly damaged.

# CIVIL AERONAUTICS AUTHORITY

OFFICIAL

ACTIONS



## OPINIONS, ORDERS AND REGULATIONS

FOR THE PERIOD MAY 16-31, 1940, INCLUSIVE

### NOTE ON THE ARRANGEMENT OF THESE PAGES

This part of the JOURNAL in each issue presents a current record of the official actions taken by the Civil Aeronautics Authority. Digests of all orders and regulations are carried in outer columns under the title "Abstracts." Persons having specific interest in any of these orders may obtain complete verbatim copies by writing to the Director of Statistics and Information, Civil Aeronautics Authority, Washington, D. C.

The large inner columns, set in different type, carry verbatim all opinions accompanying Authority actions. The type and format used will be utilized in the preparation of bound volumes of opinions of the Authority which will be issued at appropriate intervals. After the first volume is completed, the temporary page numbers now used will be replaced by the actual volume and page number which the text will carry in the bound volumes.

### ABSTRACTS

Order No. 507: Limited commercial pilot certificate of Daniel L. Boone suspended for 90 days. (This order was not released in time for inclusion in the last issue of the JOURNAL.)

The Authority on May 10 suspended for a period of 90 days limited commercial pilot certificate No. 38859 held by Daniel L. Boone, Urbana, Ill., for giving flying instruction without being possessed of a valid instructor rating and other violations of the Civil Air Regulations. (Previous order No. 352). (For full text of opinion and order see Docket No. SR-36 p. 246.)

### C. A. A. OPINIONS

*C. A. A. Opinions—Vol. I* Temporary  
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DOCKET No. SR-36

#### BOONE—AIRMAN CERTIFICATE

In the matter of Daniel L. Boone, Urbana, Ill., holder of Limited Commercial Pilot Certificate No. 38859.

*Decided May 10, 1940*

#### OPINION

##### BY THE AUTHORITY:

The Civil Aeronautics Authority on January 30, 1940, issued its order (No. 609-105) requiring Daniel L. Boone, holder of limited commercial pilot certificate No. 38859, to show cause why said certificate should not be revoked or suspended. Pursuant to the mandate of this order, Respondent appeared in person and by attorney before an examiner of the Authority at a public hearing held in Urbana, Illinois, on February 5, 1940.

The Authority issued the show-cause order based upon a finding that there was probable cause to believe that the Respondent had violated sections 20.650<sup>1</sup> and 01.703<sup>2</sup> of the Civil Air Regulations in that between July 8 and August 5, 1939, he:

- (1) " \* \* \* gave flying instruction in \* \* \* aircraft [NC 14375] without being possessed of a valid instructor rating;"
- (2) " \* \* \* while owner of said aircraft \* \* \* permitted it to be flown by a person other than one possessed of a pilot certificate valid for the operation involved;"

On February 13, 1940, the examiner filed his report in which he found that Respondent had committed the violations charged in the

show cause order and, in addition, found that he had violated another provision of the Civil Air Regulations by carrying persons for hire in certificated aircraft beyond the geographical limits specified in his pilot certificate.<sup>3</sup> The examiner recommended that the Respondent's limited commercial pilot certificate be revoked. A copy of the report was served upon the Respondent and thereafter he filed exceptions to the report which will be discussed hereinafter.

<sup>1</sup> Section 20.650. No person shall give flying instruction, for or without hire, to any other person unless possessed of at least a valid commercial pilot certificate and a valid instructor rating.

<sup>2</sup> Section 01.703. The registered owner or the operator of a certificated aircraft shall not permit it to be flown by any person other than one possessed of a pilot certificate valid for the type of aircraft and operation involved.

<sup>3</sup> Section 20.613. No person possessed of a valid limited commercial pilot certificate shall pilot any aircraft, beyond the geographical limits specified in such pilot certificate, carrying any person for hire. . . .

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Three major issues present themselves for decision in this case: (1) Did the Respondent, during the period referred to in the order to show cause, give instruction without an instructor rating? (2) Did the Respondent, during that period, permit another person who held no instructor rating to give instruction in an aircraft owned by the Respondent? (3) Did the Respondent carry persons for hire in certificated aircraft beyond the geographical limits specified in his pilot certificate and, if so, can the Authority give consideration to this violation in arriving at its decision in this case in view of the fact that no such charge was contained in the show cause order?

(1) The evidence introduced to sustain this charge is very meager. It was admitted by the Respondent at the hearing that he held only a limited commercial pilot certificate and that he did not hold an instructor rating. However, the only evidence which might tend to show the giving of flight instruction by the Respondent during the period under consideration is the testimony of Felix Beadal, Jr., a student at the University of Illinois in Urbana. He stated that during the latter part of July 1939, the Respondent made a flight with him for the purpose of determining whether he was qualified to solo, and that during the flight which lasted about 10 minutes, the witness piloted the aircraft, circling the field two or three times and landing. The witness stated that while the Respondent did not give him any directions or suggestions looking toward the improvement of his flying technique, he did announce at the conclusion of the flight that he considered him qualified to solo. The Respondent denied ever having flown with the witness Beadal. However, even if Mr. Beadal's statement is taken at face value, we hold that the acts of the Respondent on this occasion did not constitute flying instruction. Consequently, we find that the first charge in the order to show cause is not sustained by the evidence.

(2) The following facts bearing upon this issue are established by undisputed evidence in the record. The Respondent was the manager of the Illini Airport at Urbana, Illinois, between July 8, 1939, and August 5, 1939, the period covered by the show-cause order. On or about July 8, 1939, Felix Beadal, Jr., arranged with the Respondent to receive flying instruction at the airport for which he was to pay \$5.00 per hour. At the outset he received his instruction, approximately 4 or 5 hours, from a Mr. Ashley, a commercial pilot with an instructor rating. Thereafter he received 6 or 7 hours of

**ABSTRACTS**  
*(Continued)*

**Order No. 515: Eastern Air Lines**  
**denied rehearing on Daytona Beach-Miami route.**

The Authority on May 17 denied petition of Eastern Air Lines, Inc., for rehearing, reargument, or reconsideration of the order of the Authority (Order No. 441) amending the certificate of public convenience and necessity of National Airlines, Inc., authorizing air transportation between Daytona Beach, Fla., and Miami, Fla.

**Order No. 516: Aircraft and aircraft engine mechanic certificate of Anton F. Brotz, Sr., suspended for 180 days.**

The Authority on May 17 suspended for a period of 180 days aircraft and aircraft engine mechanic certificate No. 8059, held by Anton F. Brotz, Sr., Kohler, Wis., for carelessness and inattention to his duties as a holder of such certificate.

**Order No. 517: Student pilot certificate of Russell O. Tilton suspended for 90 days.**

The Authority on May 17 suspended for a period of 90 days, and thereafter until such time as the holder thereof shall have received 2 hours of dual instruction from a certificated instructor, student pilot certificate No. S-99762, held by Russell O. Tilton, Lakewood, N. J., for piloting an aircraft after sunset and before sunrise when said aircraft was not equipped with navigation lights, and other violations of the Civil Air Regulations.

**Order No. 518: Vacated show cause order in the case of Russell O. Tilton.**

The Authority on May 17 vacated its order No. 477 directing Russell O. Tilton, Lakewood, N. J., to appear before an examiner of the Authority and show cause why his student pilot certificate should not be revoked or suspended.

**Order No. 519: Private pilot certificate of Harry M. Lustig revoked.**

The Authority on May 17 revoked private pilot certificate No. 42758, held by Harry M. Lustig, Denver, Colo., for piloting an aircraft on a civil airway carrying a person not possessed of a pilot certificate valid for the operation involved, who occupied a control seat of said aircraft without the dual controls thereof having been made inoperative, and other violations of the Civil Air Regulations. (Previous order No. 503.)

## ABSTRACTS

(Continued)

### Order No. 520: Violations referred to the Attorney General for judicial action.

The Authority on May 17 referred the following case to the Attorney General for judicial action for violations of the Civil Air Regulations:

*Ernest L. Gammon, Dallas, Tex.*—For piloting an aircraft on a civil airway at a height over a congested area not sufficient to permit at all times an emergency landing outside of such area in the event of complete power failure.

### Order No. 521: Interlocking relationships approved.

The Authority on May 21 approved interlocking relationships of Walter G. Kilner, William H. Standley, and Pan American Airways, Inc., and subsidiaries.

### Order No. 522: Violation referred to the Attorney General for judicial action.

The Authority on May 24 referred to the Attorney General for judicial action the following case involving a violation of the Civil Air Regulations:

*Harold A. Wagner, Portland, Oreg.*—For piloting an aircraft on a civil airway without being possessed of a valid pilot certificate.

### Order No. 523: Students in Experimental Program allowed to make cross-country flights with less than 8 hours solo flight time.

The Authority on May 24 adopted an order permitting students participating in the Pilot Training Research Program to make solo cross-country flights with less than 8 hours solo flight time as required by the Civil Air Regulations.

### Order No. 524: Applications of Braniff Airways and Eastern Air Lines consolidated.

The Authority on May 24 adopted an order consolidating applications for certificates of public convenience and necessity of Braniff Airways, Inc. (St. Louis—Washington), and Eastern Air Lines, Inc. (Kansas City—Washington).

### Order No. 525: Applications for amendments of certificates consolidated.

The Authority on May 24 adopted an order consolidating applications for amendments of certificates of public convenience and necessity of Eastern Air Lines, Inc. (Atlantic City, N. J.), Transcontinental & Western Air, Inc. (Atlantic City, N. J.), and Pennsyl-

dual instruction from Glenard Field, who held a limited commercial pilot certificate but no instructor rating. The Respondent designated Mr. Field to give instruction to Mr. Beadal and a two-place Piper Cub identified as NC 14375 was used for the purpose.

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From this evidence it appears that if the Respondent was at that time the owner of the Piper Cub, the second charge set forth in the show-cause order is sustained by the evidence. However, the Respondent testified that while he was the registered owner of the Piper Cub prior to July 6, 1939, on that date he transferred it to the Illini Airport, Inc., a corporation the principal business of which is the operation of the Illini Airport. A copy of the registration certificate of the aircraft which purported to be currently effective was introduced in evidence at the hearing and tends to show that the Respondent was the registered owner of the aircraft at the time of the hearing and during the period covered by the order to show cause. The Respondent testified that while he, as an officer of the corporation, had had correspondence with the Civil Aeronautics Authority in order to secure the registration of the aircraft in the name of the corporation, such registration had not, at the time of the hearing, been accomplished.

The evidence to the effect that the Respondent had transferred ownership of the aircraft in question on July 6, 1939, is controverted only by the statements contained in the registration certificate. Section 501 (f) of the Act clearly prohibits us from considering registration in the name of a particular person as evidence of ownership of an aircraft by that person.<sup>4</sup> Consequently we find that the Respondent, during the period covered by the order to show cause, was not the owner of aircraft NC 14375.

Moreover, he cannot be considered as the "registered owner" of the aircraft merely by reason of the fact that the registration certificate, which purported to be effective at the time of the hearing and during the period covered by the show cause order, showed him to be the registered owner. Section 00.1 of the Civil Air Regulations specifically provides that the registration of an aircraft and the certificate issued pursuant thereto shall expire automatically upon the date the ownership of the aircraft is transferred. Therefore, it appears from the record that the aircraft here in question was not registered from the date of the transfer of ownership on July 6, 1939, until the date of the hearing. For this reason we find that during the period covered by the show cause order, the Respondent was not, within the meaning of section 01.703 of the Civil Air Regulations, the registered owner of aircraft NC 14375.

However, it should be noted that this section of the Civil Air Regulations directs its prohibition not only at the registered owner of an aircraft, but also at the "operator." The Respondent testified that during the period covered by the show cause order he was the airport manager for the corporation and in that capacity he was responsible for the operation of the aircraft owned by the corporation.

<sup>4</sup> Section 501 (f). " \* \* \* Registration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is, or may be, in issue."

Therefore it is necessary for us to determine whether the Respondent was the "operator" of NC 14375 at the time he permitted its use for the giving of instruction by a person without an instructor rating. The "operator" of an aircraft is, of course, one who "operates" aircraft. Under section 1 (26) of the Civil Aeronautics Act a person "operates" aircraft "who \* \* \* authorizes the operation of aircraft whether with or without the right of legal control of the aircraft, \* \* \*." Words used in the Civil Air Regulations which are issued pursuant to the Civil Aeronautics Act should be construed, unless the context otherwise requires, in accordance with the definition of the same or similar terms used in that Act.<sup>5</sup> Therefore we hold that the phrase "operator of a certificated aircraft" as used in section 01.703 of the Civil Air Regulations includes a person who authorizes the operation of an aircraft whether or not he has the right of legal control. This interpretation of the phrase having been adopted, it seems clear that during the period covered by the order to show cause the Respondent was, within the meaning of section 01.703, the operator of NC 14375 and we so find.

However, the show cause order charges the Respondent with violating section 01.703 of the Civil Air Regulations as "owner" of the aircraft in question. Therefore the issue is presented as to whether we can give consideration in arriving at our decision to the violation committed by the Respondent not as owner but as operator of the aircraft.

We had occasion to consider a question similar to this in *In the Matter of Charles B. Stead*.<sup>6</sup> The show cause order in that case charged the Respondent with failing to work an orientation procedure prior to 3:17 a. m., but evidence was introduced which tended to show that the Respondent had used poor judgment by failing to work an orientation procedure prior to 3:03 a. m. The Respondent argued that the Authority should not give any consideration to any failure on his part to work an orientation procedure prior to 3:17 a. m. because that failure had not been charged in the order to show cause. In its opinion the Authority stated:

" \* \* \* it is our conclusion that the contention is not sound. In so arguing the respondent relies upon the specific recitals contained in Order 609-1 as being in the nature of counts in a pleading or indictment and thus exclusive in their operation. These recitals, however, are of an entirely different character and serve an entirely different purpose. In the order they only purport to be specific statements of the reasons which justify the Authority in initiating a proceeding against respondent Stead for the purpose of determining whether his airline transport pilot certificate should be suspended or revoked.

<sup>5</sup> See section 287.1 of the Economic Regulations which provides, in effect, that unless the context otherwise requires, terms used in the Authority's regulations which are defined in the Act shall be construed in accordance with that definition.

<sup>6</sup> Docket No. 197, decided April 25, 1939.

They do not constitute an exact description of the issues involved. This is clearly shown by clause (3) of the findings of Order 609-1 which does set forth the scope of the issues involved in the proceeding. It states:

"(3) A public hearing is necessary to enable the Authority to determine whether (a) the public interest requires that said certificate be suspended, in whole or in part, for any further period, and (b) any cause exists which would justify the permanent revocation of such certificate in whole or in part.

**ABSTRACTS**  
(Continued)

vania-Central Airlines Corporation (Baltimore, Md., Atlantic City, N. J., Camden, N. J., and Newark, N. J.).

**Order No. 526: Northwest Airlines exempted from certain provisions of section 401 (a) of the Civil Aeronautics Act.**

The Authority on May 24 adopted an order exempting Northwest Airlines, Inc., from certain provisions of section 401 (a) of the Civil Aeronautics Act, insofar as is necessary to permit said air carrier to engage in nonstop operations between Portland, Oreg., and Spokane, Wash.

**Order No. 527: Agreement on air line passes approved.**

The Authority on May 24 approved an agreement (C. A. A. No. 109) relating to air line passes filed with the Authority by certain air carriers. (For full text of the opinion and order see docket No. 425, p. 251.)

**Order No. 528: Instructor certificates and ratings granted to instructors engaged in Army Air Corps expansion program.**

The Authority on May 24 granted instructor certificates and ratings to instructors engaged in the United States Army Air Corps expansion program for the purpose of qualifying instructors engaged in the Civilian Pilot Training Program to give advanced flying instruction and to give necessary ground instruction to students in the program.

**Order No. 529: Pan American permitted to transport Red Cross supplies from New York to Lisbon, Portugal, without filing express tariffs.**

The Authority on May 21 exempted Pan American Airways Co., (of Delaware) from the provisions of section 403 of the Civil Aeronautics Act and section 224.1 of the Economic Regulations to permit the transportation by air over the route from New York, N. Y., to Lisbon, Portugal, of bandages and surgical dressings, surgical instruments and medical supplies belonging to and to be used by the American Red Cross, without the filing of express tariffs.

**Order No. 530: Joint application filed by United, T. W. A., Eastern and American dismissed without prejudice.**

The Authority on May 28 dismissed without prejudice the joint application filed by United Air Lines Transport

## ABSTRACTS (Continued)

Corporation, Transcontinental & Western Air, Inc., Eastern Air Lines, Inc., and American Airlines, Inc., pursuant to section 238.6 of the Economic Regulations, for approval of temporary suspension of service to the city of Newark, N. J.

### Order No. 531: Violations referred to the Attorney General for judicial action.

The Authority on May 31 referred to the Attorney General for judicial action the following case involving violations of the Civil Aeronautics Act and the Civil Air Regulations:

*Charles W. Gatschet, Des Moines, Iowa.*—For piloting an aircraft acrobatically over an airport and failing to observe local field traffic rules and signals given by the traffic control tower operator.

### Order No. 532: Violations referred to the Attorney General for judicial action.

The Authority on May 31 referred to the Attorney General for judicial action the following case involving violations of the Civil Aeronautics Act and the Civil Air Regulations:

*Donald C. Wray, Portland, Oreg.*—For piloting an aircraft on a civil airway without being possessed of a valid pilot certificate, and when said aircraft was not certificated as airworthy.

### Order No. 533: Violations referred to the Attorney General for judicial action.

The Authority on May 31 referred to the Attorney General for judicial action the following cases involving violations of the Civil Aeronautics Act and the Civil Air Regulations:

*Alfred H. Rosenhan, Midvale, Utah.*—For piloting an aircraft on a civil airway when said aircraft was not possessed of a valid airworthiness certificate.

*Cort A. Rosenhan, Midvale, Utah.*—For piloting an aircraft on a civil airway when said aircraft was not possessed of a valid airworthiness certificate.

## REGULATIONS

### Regulation No. 76: Adopted regulation requiring notice of construction or alteration of structures on or near civil airways. (Full text appears on page 245.)

The Authority on May 17 adopted a regulation requiring that notice be given of the construction or alteration of structures on or near civil airways. (Effective July 16, 1940.)

"Obviously, within the scope of the issues in this proceeding, the Vice Chairman was justified in finding, and the Authority may properly find, that the failure of Captain Stead to work the proper orientation procedures prior to 3:17 a. m. constitutes grounds for revoking his airman certificate."

Thus we decided that the recitals in our show-cause orders were not to be dealt with in the technical fashion that courts of law deal with the counts in indictments in criminal cases. No new charge was brought against Respondent Stead and there was no indication in the record that he was surprised by the introduction of testimony relating to his failure to work an orientation problem prior to 3:17 a. m. He was fully acquainted with the charge against him. The same thing may be said of the case at hand. The acts complained of were fully set forth in the show-cause order and to this extent the evidence conforms precisely to the charge. The only respect in which the proof varies from the charge concerns the capacity in which the Respondent violated the Regulations. This does not appear so to affect his substantial rights as to require us to hold the charge to be unsupported by the evidence.

(3) This same issue is involved in determining whether, in reaching its decision in this case, the Authority may take into consideration evidence tending to show that the Respondent violated the Civil Air Regulations by carrying passengers for hire beyond the geographical area specified in his limited commercial pilot certificate. No such charge was set forth in the show-cause order but upon cross-examination by the examiner, the Respondent admitted committing the violation. The Respondent's counsel objected during the hearing to the line of questioning which resulted in this admission and excepted to the finding by the examiner in his report that the Respondent had committed the violation.

An entirely new charge was brought into the proceeding by the examiner and the Respondent was required to give evidence with respect to it without any previous notice that he was to be called upon to defend himself against it. Nor was he offered additional time in which to secure and present such mitigating evidence as might have been available to him. While we held in the *Stead* case that the recitals in our show cause orders are not to be treated with undue strictness, we do not hold that a respondent's right to a fair hearing may be impaired by permitting him to be surprised and left defenseless by the introduction of evidence with respect to a charge of violation

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or incompetence of which he has not had reasonable notice. Such is the case here and we, therefore, exclude evidence of this violation from consideration in determining whether the Respondent's certificate should be suspended or revoked.

In his exceptions the Respondent objects for the first time to the conduct of the proceedings on the ground that he did not receive adequate notice of the hearing. It appears that while the Respondent received only 3 days' notice of the hearing which was held on February 5, he expressly consented to the conduct of the hearing on that date and did not protest at any time during the hearing that he had not had sufficient time to prepare his defense. Under these circumstances we hold that the objection is not well founded.

From the entire record we find that the Respondent, between July 8 and August 5, 1939, while operator of Piper Cub NC 14375, authorized it to be used for instruction by a person not possessed of an instructor rating in violation of section 01.703 of the Civil Air Regulations. He did not passively or negligently permit the airplane to be used for unauthorized instruction. He made the arrangements himself and designated the unauthorized instructor to give the instruction. Respondent having thus demonstrated his disregard for the regulations of the Authority, it is necessary for us in the interest of safety to take action designed to convince him of the necessity for strict compliance in the future. Section 609 of the Civil Aeronautics Act provides that the Authority may suspend a pilot certificate "if the interest of the public so requires." For the reason heretofore stated, we find that the public interest requires the suspension of the Respondent's limited commercial pilot certificate for a period of 90 days.

#### ORDER

The Civil Aeronautics Authority, upon the foregoing findings and conclusions, and pursuant to sections 205 (a) and 609 of the Civil Aeronautics Act of 1938, orders that limited commercial pilot certificate No. 38859, issued to Daniel L. Boone of Urbana, Illinois, be, and the same is, suspended for a period of 90 days from the date of this order.

Hinckley, Branch, Ryan, Mason, and Warner, Members of the Authority, concurred in the above opinion and order.

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DOCKET No. 425

#### AIRLINE PASS AGREEMENT

In the matter of an agreement (C. A. A. No. 109), dated February 15, 1939, entered into by and among American Airlines, Inc., Boston-Maine Airways, Inc., Braniff Airways, Inc., Chicago & Southern Air Lines, Inc., Continental Air Lines, Inc., Delta Air Corporation, Eastern Air Lines, Inc., Inland Air Lines, Inc., Inter-Island Airways, Ltd., Mid-Continent Airlines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American Airways, Inc., Pennsylvania-Central Airlines Corporation, Transcontinental & Western Air, Inc., United Air Lines Transport Corporation, Western Air Express Corporation, and Wilmington-Catalina Airline, Ltd., filed pursuant to section 412 (a) of the Civil Aeronautics Act of 1938.

*Decided May 24, 1940*

Agreement approved.

#### OPINION

##### BY THE AUTHORITY:

On May 1, 1939, pursuant to section 412 (a) of the Civil Aeronautics Act of 1938, there was filed with the Authority an "AGREEMENT RELATING TO AIRLINE PASSES," dated February 15, 1939. The letter of transmittal states that the Agreement had been executed by each of the above-named air carriers (hereinafter referred to as the parties).

After defining certain of the terms used therein, the Agreement provides that a party "may issue a pass for" certain described categories of persons. It then provides that a party "may not honor a pass issued by any other" air carrier or foreign air carrier, and "may not issue a pass to any person except as authorized" by the Agreement or "as required by law" (except in the case of overseas or foreign air transportation).

#### ABSTRACTS (Continued)

##### Regulation No. 77: Adopted Amendment No. 50 of the Civil Air Regulations.

The Authority on May 17 adopted Amendment No. 50 of the Civil Air Regulations, effective August 1, 1940, creating a new method for rating flying schools. (Part 50—"Flying School Rating.")

##### Regulation No. 78: Adopted Amendment No. 51 of the Civil Air Regulations.

The Authority on May 17 adopted Amendment No. 51 of the Civil Air Regulations, effective June 1, 1940, revising the qualification for, and the rules governing the operation of, air carriers.

##### Regulation No. 79: Adopted Amendment No. 52 of the Civil Air Regulations.

The Authority on May 21 adopted Amendment No. 52 of the Civil Air Regulations, discontinuing the requirement of weather interruption report forms. (Effective June 20, 1940.)

##### Regulation No. 80: Adopted Amendment No. 53 of the Civil Air Regulations.

The Authority on May 21 adopted Amendment No. 53 of the Civil Air Regulations, revising the requirements for airline transport pilots for night flying. (Effective June 20, 1940.)

##### Regulation No. 81: Adopted Section 228.4 of the Economic Regulations.

The Authority on May 24 adopted section 228.4 of the Economic Regulations regarding the issuance and interchange of tickets and passes for free or reduced-rate transportation.

##### Regulation No. 82: Adopted Amendment No. 54 of the Civil Air Regulations.

The Authority on May 28 adopted Amendment No. 54 of the Civil Air Regulations revising the regulations governing operation of United States civil aircraft in foreign countries by striking Section 20.68.

##### Regulation No. 83: Adopted Amendment No. 55 of the Civil Air Regulations.

The Authority on May 28 adopted Amendment No. 55 of the Civil Air

## ABSTRACTS (Continued)

Regulations modifying provisions for military competence for piloting aircraft under instrument conditions. (Effective May 28, 1940.)

**Regulation No. 84: Adopted Amendment No. 56 of the Civil Air Regulations.**

The Authority on May 28 adopted Amendment No. 56 of the Civil Air Regulations providing alternative requirements for type and airworthiness certification of airplanes in the transport category; operating limitations for such airplanes, and amendment of the general minimum requirement for a showing of aircraft by an applicant for an air carrier operating certificate under part 40. (Effective July 1, 1940.)

**Regulation No. 85: Adopted regulation restricting air traffic over Indianapolis Speedway.**

The Authority on May 28 adopted a regulation restricting air traffic over the Indianapolis Speedway and vicinity on May 30, 1940.

Section 412 (a) of the Act provides that "every air carrier shall file with the Authority" a copy or memorandum "of every contract or agreement \* \* \* or any modification or cancellation thereof" which—(1) affects air transportation; (2) was in force on August 22, 1938, or entered into after that date; (3) is between—(a) air carriers, or (b) an air carrier and a foreign air carrier, or (c) an air carrier and any other carrier; and (4) relates to any of the following subjects: (a) "pooling or apportioning earnings, losses, traffic, service, or

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equipment"; (b) "the establishment of transportation rates, fares, charges, or classifications"; (c) "preserving and improving safety, economy, and efficiency of operation"; (d) "controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition"; (e) "regulating stops, schedules, and character of service"; or (f) "other cooperative working arrangements."

While the description of contracts required to be filed under this section is general in terms, there can be little doubt that the Agreement falls within that description. It affects air transportation; was entered into after August 22, 1938; is between air carriers; and relates to one or more of the following subjects: "the establishment of transportation rates, fares, charges, or classifications"; "controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition"; or "other cooperative working arrangements."

Subsection (b) of section 412 of the Act requires the Authority to disapprove by order any contract, described in subsection (a), that it finds to be either "adverse to the public interest," or "in violation of \* \* \* (the) Act." If it finds the contract to be neither, it must approve.

Before attempting to determine the scope and intent of the Agreement, or to assay the Agreement in the light of either of those standards, it is necessary to consider the provisions of the Act relating to the issuance of passes. Section 403 (b) provides:

"No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for air transportation, or for any service in connection therewith, than the rates, fares, and charges specified in its currently effective tariffs;<sup>1</sup> and no air carrier or foreign air carrier shall, in any manner, or by any device, directly or indirectly, \* \* \* extend to any person any privileges or facilities, with respect to matters required by the Authority to be specified in such tariffs, except those specified therein. Nothing in this Act shall prohibit such air carriers or foreign air carriers, under such terms and conditions as the Authority may prescribe, from issuing or interchanging tickets or passes for free or reduced-rate transportation to their directors, officers, and employees and their immediate families; witnesses and attorneys attending any legal investigation in which any such air carrier is interested; persons injured in aircraft accidents and physicians and nurses attending such persons; and any person or property with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation; and, in the case of overseas or foreign air transportation, to such other persons and under such other circumstances as the Authority may by regulations prescribe."

<sup>1</sup> Which it is required to file, post, and publish under section 403 (a), and which must show "all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier when through service and through rates shall have been established, and \* \* \* to the extent required by regulations of the Authority, all classifications, rules, regulations, practices, and services in connection with such air transportation."

Section 404 provides:

"(a) It shall be the duty of every air carrier \* \* \* to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to \* \* \* air transportation \* \* \*"

"(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, \* \* \* or description of traffic in air transportation in any respect whatsoever or subject any particular person, \* \* \* or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

In addition, section 405 (m) requires the carriage, without charge, of certain employees of the Post Office Department under specified circumstances.

It will be observed that these provisions of the Act impose no restrictions upon the furnishing of free or reduced-rate transportation to the persons described in the second sentence of section 403 (b), other than the "terms and conditions" which the Authority may prescribe. However, as to persons not described in that sentence (and not required by law to be carried free), an air carrier or foreign air carrier may, under section 403 (a) and the first sentence of section 403 (b), furnish transportation only if provision therefor has been made in its currently effective tariffs, and then only at the rate specified in such tariffs. Furthermore, every provision which an air carrier or foreign air carrier includes in its tariffs must meet the standards prescribed by section 404. In other words, while the Act does not absolutely prohibit the granting of free or reduced-rate transportation to persons not described in the second sentence of section 403 (b), it does prohibit the transportation of such persons <sup>2</sup> (1) unless provision therefor has been made in the carrier's tariffs, or (2) if a violation of section 404 would result.

The parties must, of course, be charged with notice of these provisions of the Act, and, in the absence of an expressed intent to the contrary, are entitled to a presumption that they intend to conform their conduct thereto. The Agreement should, therefore, be construed against the background of the Act.

At first sight, the Agreement appears to contain three main provisions: (1) to permit or authorize the parties to issue passes to the persons described therein; (2) to prohibit a party from honoring a pass issued by any other air carrier or foreign air carrier; and (3) to prohibit a party from issuing a pass to any person not described in the Agreement and not required by law to be carried without charge. Upon analysis, however, it appears that the first provision is not itself an agreement. The parties do not agree to take any affirmative

<sup>2</sup> Excluding, of course, those who must be carried free by law.

action. They agree only (in the second and third provisions) to refrain from doing certain things. They assume no contractual obligation to issue passes to anyone, nor do they impose any contractual conditions upon the issuance of passes to any of the persons described in the Agreement. Accordingly, as far as the Agreement alone is

concerned, a party may or may not issue a pass to a person described in the Agreement, as he chooses, and neither course of action will constitute a breach of the Agreement. On the other hand, the honoring of a pass issued by another air carrier or foreign air carrier, or the issuance of a pass to a person not described in the Agreement (and not required by law to be carried without charge) would be a breach of the parties' agreement not to do either of those things, and would result in a contractual liability for such breach. Accordingly, only the second and third provisions can be considered as legally enforceable agreements, and the first provision is significant only to the extent that it defines the scope of the third provision.

Under the mandate of section 412 (b), we must first inquire whether the Agreement, so construed, violates the Act. Insofar as the first provision is concerned, it could be dismissed as no part of the agreement, and hence immaterial to our present inquiry. However, in order to make clear the scope of our decision, it may be advisable to devote some attention to the position of the parties under that portion of the Agreement and under the Act. As indicated above, transportation may be furnished to a person not described in the second sentence of section 403 (b) of the Act (and not required by law to be carried without charge) only (1) pursuant to an applicable provision in the currently effective tariffs of the carrier furnishing such transportation, and (2) if no violation of section 404 will result. If the parties had, by their Agreement, bound themselves to issue passes to the persons described in the Agreement, it would be necessary for us to determine whether all such persons fall within the description contained in section 403 (b). But the parties have not so agreed. As already indicated, under the terms of the Agreement, they may or may not issue passes to persons described in the Agreement without incurring a contractual liability in either event. But that does not mean that, if any such person falls outside the description contained in section 403 (b), the parties are free to issue passes to such persons under the Act. If any person described in the Agreement is not entitled to free or reduced-rate transportation under the provisions of section 404, the parties do not violate the Agreement by complying with the Act. Likewise, if section 403 requires, as a condition precedent to the issuance of a pass to any person described in the Agreement, that appropriate provision be made therefor in the issuing carrier's tariffs, the Agreement is not violated by the carrier's compliance with the law in that respect. It is, therefore, unnecessary for us to compare the

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categories described in the Agreement with those described in the Act, and we expressly refrain from the expression of any opinion as to whether any of the persons described in the Agreement fall outside the categories defined in section 403 (b) of the Act.

Insofar as the second provision of the Agreement is concerned, there is no basis for saying that it violates any provision of the Act. Nothing in the Act requires an air carrier to honor passes issued by another air carrier or foreign air carrier. Accordingly, the parties violate no statutory duty when they agree not to honor passes issued by other air carriers or foreign air carriers, or when they observe such an agreement.

Nor is there any basis for holding that the third provision of the Agreement violates the Act. While the Act affirmatively requires the carriage, without charge, of certain persons, under the terms of the Agreement the parties are free to comply with that mandate without incurring any contractual liability therefor. To the extent that the Agreement prohibits a party from issuing passes to persons other than those described in the Agreement and those whom the law requires to be carried without charge, no provision of the Act is in conflict therewith.

The question remains whether the Agreement is "adverse to the public interest." No sufficient basis for an affirmative answer to that issue is apparent. On the contrary, an agreement on the part of a large group of air carriers to restrict the granting of free and reduced-rate transportation would appear to be distinctly in the public interest. The abuses to which the issuance of passes are subject are matters of common knowledge among those acquainted with the history of transportation in its various forms. Furthermore, it can reasonably be expected that compliance with the Agreement will forestall lengthy and expensive litigation which might otherwise result. Certainly, as long as the Agreement remains in effect, the field of potential litigation is restricted. For these reasons, and others which could be mentioned, we conclude that the Agreement is not "adverse to the public interest."

Upon the conclusion that the Agreement is neither "adverse to the public interest" nor "in violation of \* \* \* (the) Act," we are required to approve it. It should be clearly understood, however, that in reaching this decision, the Authority expresses no opinion as to whether the description of the persons contained in the Agreement is coincident with, or embraced within, the description contained in section 403 (b). We have expressly refrained from making such a comparison as unnecessary to the disposition of the matter before us. Accordingly, our decision in this matter should not be construed as an opinion that the filing of tariff provisions is not a condition precedent, under section 403, to the issuance of passes to any person described

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in the Agreement. Nor do we express any opinion as to whether a violation of section 404 would result from the issuance of a pass to any such person, whether or not tariff provisions have been previously filed. Insofar as the parties, by their Agreement, purport to define a field of permission within which they are free to act, they should bear in mind that they act entirely at their own risk in determining whether the Act also permits such action. We have given them the benefit of a presumption that, in performing the Agreement, they will comply with the requirements of the Act and regulations promulgated thereunder. They may expect no benefit from our action on the Agreement, if that presumption is rebutted by their conduct.

Our disposition of the matter has rendered unnecessary a critical examination of the definitions contained in the Agreement. To the extent that such definitions may conflict with definitions contained in the Act, or in any regulation of the Authority now or hereafter in effect, or otherwise adopted by the Authority, nothing in this opinion, or in the action of the Authority in approving the Agreement, should

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be construed as an acceptance or sanction of the definitions contained in the Agreement.

An appropriate order will issue.

Branch, Ryan, Mason and Warner, Members of the Authority, concurred in the above opinion. Chairman Hinckley did not take part in the decision.

#### ORDER

The above-named air carriers having filed with the Authority, pursuant to section 412 (a) of the Civil Aeronautics Act of 1938, a copy of an agreement, dated February 15, 1939, entered into by and among said parties, relating to the honoring and issuance of passes; and

The Authority having issued its opinion, containing its findings of fact, conclusions and decision, which is attached hereto and made a part hereof, and finding that its action in this matter is necessary pursuant to said opinion:

Now, THEREFORE, IT IS ORDERED, That said agreement be and the same is approved: *Provided*, That this approval shall terminate if the Authority shall at any time find that any performance by the parties of said agreement, or any of its provisions, would be adverse to the public interest, or in violation of the Act or of any rule, regulation, or order of the Authority now or hereafter in effect.

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